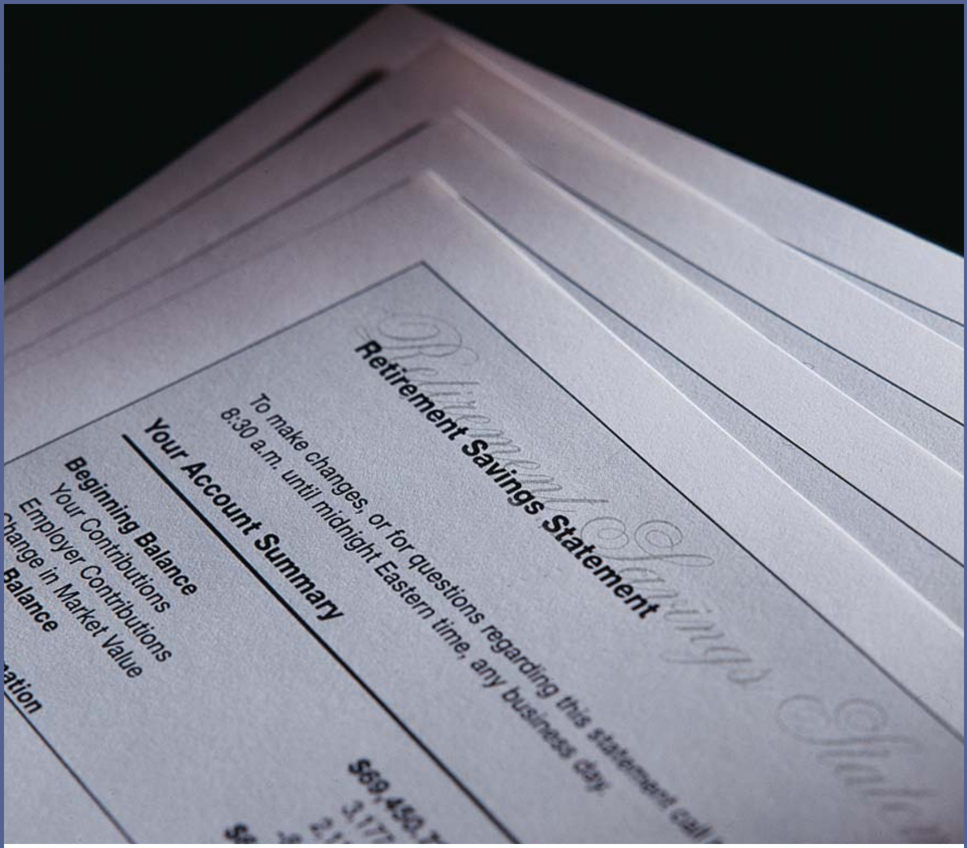
ForeFront Portfolio℠ Risk Analyzer for Privately Held Companies

FIDUCIARY LIABILITY



Risk review performed for:

Date:

The Purpose of the Risk Analyzer

When it comes to insuring your company, you can't afford to leave things to chance. A lack of proper coverage at a critical time can potentially result in a huge financial loss. The key to a sound base of insurance protection is securing coverage that truly meets all of your company's unique exposure needs.

How? Chubb's ***ForeFront Portfolio℠ Risk Analyzer*** can help. The ***Risk Analyzer*** can help you uncover some of the biggest potential threats to your company's bottom line. It will help you answer several important questions about your company's possible financial exposures:

- What are your company's exposures and vulnerabilities?
- What is your company's tolerance for risk?
- Is your company's insurance protection adequate?

Your trusted agent or broker can assist you in using the ***Risk Analyzer*** to identify possible financial exposures your company might have in each of eight critical areas:

Risk*	Description
Employment practices liability	Employees and former employees can sue a company, its board members, and its officers for discrimination, harassment, and other employment practices exposures.
Fiduciary liability	Retirees, former employees, and employees can sue the company and its plan fiduciaries for alleged mismanagement in administering benefits.
Crime	A trusted employee can embezzle funds, steal inventory, or commit fraud over a long period of time.
Directors and officers liability	Investors, shareholders, customers, clients, government regulators, creditors, and competitors can sue a company's board members and officers over their actions or decisions.
Miscellaneous professional liability	Customers and related third parties can sue professional service providers for negligence in providing or failure to provide a service.
Workplace violence expense	An employee, relative of an employee, or outsider can threaten or perpetrate harm against employees in the workplace.
Internet liability	An outside person or company can sue the company for copyright infringement or defamation over content it posts on its Web site.
Kidnap/ransom and extortion	An employee can be kidnapped while traveling, or a criminal can attempt extortion against the company by threatening its employees or products.

By using Chubb's ***ForeFront Portfolio Risk Analyzer***, you are taking an important step toward effectively managing some of your company's most dangerous financial exposures. Your answers to the ***Risk Analyzer*** questions will serve as the foundation for a program of insurance coverage, specifically designed to meet your company's needs.

* Shaded area denotes the risk area covered by this version of the ***Risk Analyzer***.

Fiduciary Liability Insurance Coverage Gap Analysis

WHAT ARE SOME TYPICAL GAPS IN TRADITIONAL COVERAGE?

ForeFront Portfolio Fiduciary Liability Insurance can help fill unexpected coverage gaps that may exist in your company's current insurance program. For example:

- The **employee benefits liability (EBL)** section of a **general liability (GL)**[1] policy protects against claims of errors and omissions in plan administration only, but not against breach of fiduciary duties under ERISA.
- While required by law, **ERISA bond (fiduciary dishonesty)** only covers "actual theft" from employee benefit plan assets.
- **Directors and officers (D&O) liability insurance** typically *excludes* claims for both EBL and breach of ERISA fiduciary duty.

In summary, EBL, ERISA bond, and D&O policies may not cover:

- Administrative errors and omissions.
- Breach of fiduciary duties under ERISA.
- Denial or change (especially reduction) of benefits.
- Improper advice or counsel.
- Wrongful termination of a plan.
- Failure to adequately fund a plan.
- Conflicts of interest.
- Imprudent investment of assets or lack of investment diversity.
- Imprudent choice of insurance company, mutual fund, or third-party service provider.

FIDUCIARY DUTIES UNDER ERISA INCLUDE:

- The duty to act exclusively for the benefit of plan participants.
- The duty to act as a prudent person would under similar circumstances.
- The duty to ensure that plan investments are diversified.
- The duty to strictly comply with ERISA standards.

1 GL policy references are based on the commercial ISO policy.

BENEFITS ADMINISTRATION AND ADVICE

Question:

Have employees of your company given advice to participants concerning eligibility for, enrollment in, or participant rights with respect to your company's employee benefit plans, such as a 401(k) or health plan?

☐ Yes ☐ No

Exposure:

Your company's employees who administrate and give advice to participants regarding your company's benefit plans can be held personally liable for these actions.

Could this happen to you?

Employee receives improper advice and is denied health benefits

- The company's health plan HMO denied payment of medical costs for an employee who had been hospitalized because it claimed it was never notified of her hospitalization, as required under the health plan.
- In fact, the employee had called her employer's plan administrator, who advised her that because she called the employer it wasn't necessary to also call the HMO, forgetting that the notification rules had recently changed.
- The employee sued her employer and the plan administrator over the benefits denial, alleging she received improper advice.

Result: The case settled for more than $500,000, including attorney fees.

FIDUCIARIES WITH ADDITIONAL RESPONSIBILITIES

Question:

Have fiduciaries of your company plan normally had, or do they now have, other full-time responsibilities?

☐ Yes ☐ No

Exposure:

If your company's fiduciaries have other full-time responsibilities, they may not be able to constantly monitor the ever-changing laws and regulations regarding plan reporting, disclosure, and operation.

Even unintended and inadvertent fiduciary violations, such as the failure to act, can create personal liability for fiduciaries of your company.

Could this happen to you?

Health plan administrator's error results in huge settlement

- A company's health plan administrator erroneously failed to forward an employee's medical insurance plan enrollment forms to the insurance company, where receipt of the forms was a prerequisite to coverage.
- A few months later, the employee required surgery, but coverage was denied because she was never enrolled in the medical plan.
- The employee's attorney demanded the firm pay medical fees of $250,000, plus the cost of surgery and post-operative care and reimbursement of attorney fees.

Result: The case settled for more than $350,000, including attorney fees.

LIABILITY FOR USE OF OUTSIDE ADVISORS

Question:

Have your company's benefit plans ever relied, or do they now rely, on professional investment managers who have discretionary control over the investment and administration of plan assets?

☐ Yes ☐ No

Exposure:

Fiduciaries are responsible for prudently selecting and continuously monitoring the performance of professional advisors who have been hired to invest plan assets; therefore, your company can be sued over the advisors' performance.

Could this happen to you?

Advisor skims 401(k) deposits

- A company hired an investment manager, who was also a relative of the company's plan administrator (so no criminal background check was conducted), to manage its 401(k) plan investments.
- During a spot audit, the Department of Labor (DOL) discovered that the investment manager had been skimming money off the top of employees' retirement fund contributions.
- The DOL demanded that the company and the investment manager make the plan whole (i.e., replace the stolen funds).

Result: The company was forced to contribute more than $2 million to the employees' 401(k) accounts, and it also incurred more than $75,000 in legal expenses.

Consider this:

While required by law, **ERISA bond (fiduciary dishonesty)** only covers "actual theft" from employee benefit plan assets. It does not cover negligent selection of an advisor—a common allegation in these types of scenarios.

REDUCTION IN BENEFITS

Question:

Has your company reduced or eliminated some employee benefits, or is it possible that it may in the future?

☐ Yes ☐ No

Exposure:

If your company has plans to change its benefit offerings, it faces increased fiduciary liability exposure to lawsuits alleging improper advice or disclosure brought by plan participants (employees) and their legal estates, as well as by the Department of Labor and the Pension Benefit Guaranty Corporation.

Consider this:

According to the *2005 Chubb Private Company Risk Survey*[2], **1 in 5** private companies plan to reduce or eliminate some employee benefits during the year ahead.

Size of company	Planning to reduce or eliminate some employee benefits:
25-49 employees	**21%**
50-249 employees	**17%**
250 or more employees	**29%**

2 For the *2005 Chubb Private Company Risk Survey*, Chubb interviewed 451 executives from privately owned companies in 46 U.S. states in order to gain a better understanding of the companies' potential liability exposures.

CONFLICTS OF INTEREST

Questions:

Have officers of your company also served, or do they now serve, as fiduciaries of your plans?

☐ Yes ☐ No

Could your plan or its fiduciaries be perceived as engaging in conflict-of-interest transactions, such as retaining service providers who also conduct business with your company?

☐ Yes ☐ No

Exposure:

Dissatisfied participants or beneficiaries can allege that your company's officers/fiduciaries made decisions that were primarily for the benefit of the company and to the detriment of the plans and beneficiaries, thereby breaching their fiduciary duty to the plan and its participants. Allegations of benefit plan impropriety (or conflict of interest) put your company at significant risk.

Consider this:

According to the *2005 Chubb Private Company Risk Survey,* the *median* loss reported by private company executives for companies that experienced a fiduciary liability lawsuit over the past five years was **$100,000**, and the average loss was **$86,128**.

INVESTMENT DECISIONS

Question:

Have your plan's fiduciaries ever selected, or do they now select, investment options?

☐ Yes ☐ No

Exposure:

If your plan's fiduciaries make decisions regarding investment options, your company and its fiduciaries may face significant liability exposure to lawsuits alleging mismanagement and improper disclosure.

Could this happen to you?

Imprudent investment leads to $4.75 million fiduciary loss

- Employees who participated in a 401(k) plan joined in a class-action suit against the investment committee, the plan administrator, the plan, and the sponsor organization, alleging breach of fiduciary duty because the company's $12 million investment in ABC Company guaranteed investment contracts (GICs):
  - Was imprudent because of ABC's extensive junk-bond holdings, and
  - Violated the terms of the master trust agreement, which authorized GIC investments underwritten only by AAA-rated companies.
- ABC Company was not AAA-rated and was eventually placed in receivership.
- The plaintiffs sought to recover their lost profits—the difference in the value of their investments in ABC Company and the value their investments would have had if they would have been placed in AAA-rated investments.

Result: After three years, the parties settled for more than $4 million, including plaintiffs' attorney fees. Defense costs totaled approximately $750,000.

Consider this:

The **EBL** section of a **GL** policy protects against claims of errors and omissions in plan administration only, but not against breach of fiduciary duties under ERISA.

IMPROPER DISCLOSURE

Question:

Do fiduciaries of your company plan to make or have they made disclosures regarding the financial condition and performance of the plan?

☐ Yes ☐ No

Exposure:

Failure to fully and accurately disclose all material information regarding the company's plan in a timely manner can create liability exposure for your company.

Consider this:

According to the *2005 Chubb Private Company Risk Survey,* nearly 1 in 5 (**18%**) of private company executives said they are concerned about a lawsuit by an employee or retiree over benefits issues in the year ahead.

Size of company	**Concerned about a lawsuit by employee/retiree over benefits issues in the year ahead:**
25-49 employees	**13%**
50-249 employees	**21%**
250 or more employees	**25%**

Chubb's Solution

Chubb's *ForeFront Portfolio Fiduciary Liability Insurance* offers protection for privately owned companies, their fiduciaries, and their benefit plans.

WHO IS INSURED BY *FOREFRONT PORTFOLIO FIDUCIARY LIABILITY INSURANCE*?

A "fiduciary" can be any employee who has discretionary authority or control with respect to the management or administration of the plan or its assets. It could be an officer, a human resources employee, or any employee who helps administer a plan or its assets.

WHAT ARE THE COVERAGE HIGHLIGHTS OF *FOREFRONT PORTFOLIO FIDUCIARY LIABILITY INSURANCE*?

- **Chubb manages the defense with expert attorneys**—Because Chubb has the duty to defend its customers, should a claim arise, we retain expert counsel at affordable rates to manage a strong defense, sparing your company this burdensome worry. We've selected a superb panel of attorneys with unparalleled experience in private company issues who are dedicated to helping secure the most positive outcome possible for your company. If there is a covered claim, Chubb pays 100% of defense costs (within the available limits and after payment of any applicable deductible), even if only part of the claim is actually covered.
- **Companies with fewer than 250 employees may qualify for special coverage features,** including an optional, separate $1 million defense costs limit and a short, simple application form.
- **Insurance for HIPAA violations available**—Automatic coverage for civil penalties assessed under the Health Insurance Portability and Accountability Act (HIPAA).
- **Insurance for 502(i) and 502(l) penalties available**—Insurance for individual fiduciaries for civil penalties, including penalties of up to 5% imposed under ERISA Section 502(i) for inadvertent violations of ERISA Section 406, and up to 20% imposed under ERISA Section 502(l) for breaches of fiduciary duty.
- **Insurance for non-ERISA plans**—Chubb provides coverage for non-qualified ("top hat" or key executive) plans.
- **Optional separate defense costs limit**—Select customers can purchase an additional limit of liability for defense costs. This option increases a customer's available insurance and helps preserve the policy limit for other claims or indemnity payments.
- **Option for guaranteed quote for new employee stock ownership plans (ESOPs)**—Chubb guarantees to issue a coverage quote for any ESOP created or acquired during the policy period.

COMPANIES WITH FEWER THAN 250 EMPLOYEES may qualify for an optional, separate $1 million defense costs limit.

Risk Analysis Summary

Your answers to the ***Risk Analyzer*** questions on the preceding pages could point to areas where your company may have significant financial exposures or gaps in its current insurance program that threaten its financial well being. Your answers will help you and your agent or broker to develop a *ForeFront Portfolio* insurance program that is tailored to your company's specific needs.

THE NEXT STEP

Your agent or broker will develop a recommendation for managing your company's risks with *ForeFront Portfolio*—an integrated insurance solution from Chubb.

Chubb Group of Insurance Companies

Warren, NJ 07059

www.chubb.com

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